



United States
Department of
Agriculture

Food and
Nutrition
Service

Mountain
Plains
Region

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Reply to
Attn. Of: SP-04-06

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Subject: School Food Authorities (SFAs) Responsibilities for Oversight of Program Operations When Contracting With Food Service Management Companies (FSMCs)

To: STATE AGENCY DIRECTORS -
(Special Nutrition Programs)

Colorado ED, Iowa, Kansas,
Missouri ED, Montana OPI,
Nebraska, North Dakota,
Utah and Wyoming

As you are all aware, the USDA Office of Inspector General (OIG) in recent years has conducted audits of school districts that use the services of FSMCs. Much of the focus of those audits, and the national "roll-up" audit that presented the overall findings of the individual audits to FNS, was the crediting of the value of USDA commodity foods provided to the FSMCs by the SFAs. However, there are other issues raised in these audits, and this memorandum addresses several of these, in order to provide guidance on certain SFA responsibilities that must be exercised when contracting with a FSMC. The dissemination of this guidance is in response to Recommendations Nos. 9 and 10 from the national OIG Audit Report 27601-0027-CH.

These are the referenced OIG recommendations:

Recommendation No. 9:

Require the FNS regional offices to ensure that their State agencies have procedures that ensure all SFAs who contract with management companies for food services continue to maintain reliable meal accountability systems that produce accurate monthly claims for reimbursement.

Recommendation No. 10:

Require the FNS regional offices to ensure that their State agencies notify their SFAs that the SFAs are responsible for performing annual on-site reviews and evaluating the meal claim information, and that contracting with a management company does not alleviate their oversight responsibility of food program operations.

While the OIG recommendations above center on SFA responsibilities with respect to meal counting and claiming systems and review of meal claim information while contracting for FSMC services, the audit findings identify the more general problem of SFA contract oversight and discharge of program responsibility in FSMC contract management. The OIG audit provides ample documentation that some SFAs are abandoning their Program responsibilities as required under Federal regulations either through direct delegation of these responsibilities to FSMCs or through inadequate oversight of FSMC contracted operations.

OIG found, for example, that 16 of the 24 SFAs visited failed to provide proper oversight of their food service operation and their contracted FSMCs. Serious problems were detected by the OIG in four of the seven States visited. These problems included:

1. SFAs paying for meals billed by the FSMCs that were not supported by documentation;
2. SFAs failing to reconcile the number of meals counted through the regular meal counting system with the number of meals billed by the FSMCs;
3. SFAs using nonprofit food service account funds to pay unauthorized and unallowable costs billed by the FSMCs;
4. SFAs allowing all food service revenue to accrue directly to the FSMCs; and
5. SFAs delegating approval of student eligibility for free and reduced price meals to the FSMCs.

In light of the problems disclosed by the OIG audits, and in response to the cited OIG audit Recommendations, we are providing guidance that addresses these problems.

While the National School Lunch Program regulations (§210.16) permit a SFA to contract with a FSMC to manage its school food service operations, the regulations prohibit delegation of certain duties. Primary among these nondelegable duties is the SFA's responsibility to ensure that its food service operation is in conformance with the SFA's agreement under the program. By terms of its Program agreement (§210.9(b)), the SFA, not its FSMC, is responsible for:

1. Observing the limitations on the use of nonprofit food service revenues account (§210.9(b)(1)), including using nonprofit food service account funds to pay only allowable costs regardless of the costs billed by the FSMC. Contracts may include such unallowable costs under some circumstances, but such costs (e.g.: late payment charges to the SFA) must be paid from a source other than the nonprofit school food service account;
2. Determining the eligibility of children for free and reduced price meals (§210.9(b)(7)); and
3. Ensuring that only reimbursable meals are included on the claim for reimbursement (§210.9(b)(8)), regardless of the number of meals billed by the FSMC.

Further, SFAs may not permit the accrual of all income and expenses to the FSMC (§210.16(c)).

As indicated in the OIG Recommendations, SFAs are required to have specific procedures (§210.7(c)) in place to determine the valid number of meals, by type, claimed for reimbursement. Further, to ensure the validity of the meal counting and claiming systems at the schools under its jurisdiction, the SFA itself, not the FSMC, must conduct an annual on-site review of each school prior to February 1 of each school year (§210.8(a)(1)). When that on-site review identifies problems with a school's meal counting or claiming procedures, the SFA must ensure the school implements corrective action and within 45 days of the review, the SFA must conduct a follow-up on-site review to determine if the correction action resolved the problems. Whether an SFA operates its food service itself, or uses a FSMC, the SFA must conduct this on-site review and remains responsible for ensuring deficiencies are identified and effective actions are taken to correct any deficiencies that are found.

The SFA is also responsible, under §210.8(a)(2)-(5), to conduct the claims review process specified therein to ensure the accuracy of the monthly reimbursement claim, and to take action whenever this review suggests the likelihood of lunch count problems so that errors will be corrected. While the FSMC may supply various data to the SFA that are used in compiling the SFA's monthly reimbursement claim, the SFA must have adequate control procedures of its own in place to monitor and review the FSMC-produced data each month to ensure that the FSMC procedures, and the data that are produced, fully meet the regulatory standards and are accurate.

As part of the response to the OIG audit recommendations cited above the Agency is reminding each State agency (SA) of its responsibilities to have SA procedures in place that ensure that all SFAs maintain an adequate meal accountability system. Further, the Agency requests that each SA remind its SFAs of the annual on-site review requirement to evaluate each school's meal counting and claiming procedures and that contracting with a FSMC does not relieve an SFA of its responsibilities for meeting program requirements, including accurate meal accountability systems and submission of accurate claims for reimbursement.

Finally, SAs are encouraged to use all the means at their disposal help ensure that SFAs fully discharge their program responsibilities while contracting with FSMCs, through:

- the annual review of FSMC contracts, with emphasis on these requirements,
- the periodic SA on-site reviews, with review in depth on these requirements,
- and, as a SA option, a requirement that each SFA develop a detailed "contract management plan" setting out the procedures the SFA will follow to monitor and control each responsibility the FSMC has under the contract.

State Agency Directors

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Please contact our office if you have questions, at (303) 844-0354.

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Special Nutrition Programs